

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
(Cincinnati)**

JOEL MOYER, et al.	:	Case No. 1:01-CV-140
	:	
Plaintiffs,	:	Magistrate Judge Timothy S. Hogan
	:	
v.	:	
	:	
AMBASSADOR PROGRAMS, INC. , et al.	:	DEFENDANT’S SECOND MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY CONCERNING THE ASSAULT ALLEGED BY PLAINTIFFS
Defendants.	:	

Defendant Ambassador Programs, Inc. (“Ambassador”) respectfully moves this Court *in limine* for an Order prohibiting and excluding any expert testimony as to whether or not Joel Moyer was (or was not) actually assaulted or “molested” during Mr. Moyer’s trip to Scotland in 1999. Any such testimony is barred by Fed. R. Evid. 401, 402, 403, 702 and 703.

I. FACTUAL BACKGROUND AND LEGAL DISCUSSION

Plaintiffs’ Third Amended Complaint, which was filed on June 3, 2004, alleges that Joel Moyer was assaulted by Scottish citizen named Mr. Ronald Carroll on or about July 15, 1999 during Moyer’s tour of the United Kingdom that was organized, in part, by Defendant Ambassador Programs, Inc. The gravamen of Plaintiff’s complaint is that while on that tour, Joel Moyer was placed in a home stay environment with Mr. Carroll, a resident of Edinburgh,

Scotland. Mr. Moyer alleges that on the second of the three nights that he stayed in Mr. Carroll's residence, he was sexually assaulted by Mr. Carroll. In their expert reports and depositions, Plaintiffs' experts have assumed, *a priori*, that the assault actually occurred as Joel Moyer reported, and that he is telling the truth. The remainder of their opinions concerning the effects of the assault on Mr. Moyer and his current condition naturally flow from that initial assumption.

All such questions directed to any experts, including the Defendant's experts, are improper under Federal Rules of Evidence 401, 402, 702, and 703. Simply put, while mental health professionals may be qualified to testify about current mental status of Mr. Moyer and their personal observations of him, they cannot opine as to whether the assault occurred, or whether they "believe" the incident occurred, or whether the Plaintiff is telling the truth about what happened because they have no basis to do so. Such testimony would not be based on any scientific, technical or specialized knowledge, as required by Fed. R. Evid. 702, and are not "facts" upon which an expert cannot properly base an opinion as required by Fed. R. Evid. 703. Such testimony would essentially pre-judge the outcome of the trial. If allowed to testify on such a matter, the expert would essentially be serving as a "human lie detector," which is not an appropriate role for an expert witness. Additionally, such evidence has the effect of depriving the jury of its proper role as the only determiner of facts.

II. CONCLUSION

Defendant Ambassador requests an Order that no expert be permitted to opine at trial as to whether the assault that Joel Moyer claims to be a victim of actually occurred, whether they "believe" Mr. Moyer's story that such an event did occur, or whether they adjudge Mr. Moyer to be truthful about such matters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 3, 2004, a copy of the **DEFENDANT'S SECOND MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY CONCERNING THE ASSAULT ALLEGED BY PLAINTIFFS** filed with the Court's ECF system and mailed to:

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